

## § 221.800

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

[59 FR 29330, June 6, 1994]

### **Subpart E—Servicing Responsibilities—Low Cost Homes**

#### **§ 221.800 Cross-reference.**

All of the provisions of subpart C, part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 221 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

## **PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY**

### **Subpart A—Eligibility Requirements**

Sec.

231.1 Eligibility requirements.

### **Subpart B—Contract Rights and Obligations**

231.251 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24615, Dec. 22, 1971, unless otherwise noted.

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### **Subpart A—Eligibility Requirements**

#### **§ 231.1 Eligibility requirements.**

The requirements set forth in 24 CFR part 200, subpart A, apply to multi-family project mortgages insured under section 231 of the National Housing Act (12 U.S.C. 1715v), as amended.

[61 FR 14406, Apr. 1, 1996]

### **Subpart B—Contract Rights and Obligations**

#### **§ 231.251 Cross-reference.**

(a) All of the provisions of part 207, subpart B of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages insured under section 231 of such Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

## **PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES**

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232.3 Eligible borrower.

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232.11 Establishment and maintenance of long-term debt service reserve account.

### **Subpart B—Contract Rights and Obligations**

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AUTHORITY: 12 U.S.C. 1715b, 1715w, 1735d, and 1735f-19; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24618, Dec. 22, 1971, unless otherwise noted.

**Subpart A—Eligibility Requirements**

SOURCE: 61 FR 14406, Apr. 1, 1996, unless otherwise noted.

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### § 232.1 Eligibility requirements, generally; applicability of certain requirements.

(a) *Eligibility, generally.* All of the requirements set forth in 24 CFR part 200, subpart A, except for the requirements for “eligible mortgagor” in 24 CFR 200.5, apply to mortgages insured under section 232 of the National Housing Act (12 U.S.C. 1715w), as amended.

(b) *Applicability of certain requirements.* As of October 9, 2012 the provisions in 24 CFR 207.255(b)(5), 207.258, 232.3, 232.11, 232.254, 232.903(c) and (d), and subpart F of part 232, excluding §§ 232.1007, 232.1009, and 232.1015 of subpart F are applicable only to transactions for which a firm commitment has been issued under this part on or after July 12, 2013.

[77 FR 55136, Sept. 7, 2012, as amended at 78 FR 25185, Apr. 30, 2013]

### § 232.2 License.

The Commissioner shall not insure any mortgage under this part unless the facility is regulated by the State, municipality or other political subdivision in which the facility is or is to be located, and the appropriate agency for such jurisdiction provides a license, certificate or other assurances the Commissioner considers necessary, that the facility complies with any applicable State or local standards and requirements for such facility.

### § 232.3 Eligible borrower.

The borrower shall be a single asset entity acceptable to the Commissioner, as may be limited by the applicable section of the Act, and shall possess the powers necessary and incidental to owning the project, except that the Commissioner may approve a non-single asset borrower entity under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner.

[77 FR 55136, Sept. 7, 2012]

### § 232.7 Bathroom.

(a) *General requirement.* For a board and care home or assisted living facility to be eligible for insurance under this part:

(1) The board and care home or assisted living facility must have no less

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than one full bathroom provided for every four residents; and

(2) Bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

(b) *Exemption for existing projects providing memory care.* The following applies to a board and care home or assisted living facility that provides housing for residents in need of memory care, *i.e.*, care for residents who have cognitive impairments, such as Alzheimer’s disease or other dementias:

(1) Subject to paragraph (b)(2) of this section, a project seeking insurance under subpart E, pursuant to section 223(f) or 223(a)(7) of the National Housing Act, may be eligible for insurance without meeting the general requirement in paragraph (a) of this section, if the project meets the following four requirements:

(i) Memory care residents are in a separate, secured, and locked area of the board and care home or assisted living facility;

(ii) Any bathroom access from a memory care resident’s bedroom or sleeping area that passes through a public corridor or area is in a separate, secured, and locked area of the board and care home or assisted living facility prescribed in (b)(1)(i) of this section;

(iii) Memory care residents receive full assistance or supervision while bathing; and

(iv) Memory care residents reside in wards that contain no more than two beds per unit and have a half-bath in each unit.

(2) If a facility serving memory care residents also serves residents who are not in a separate, secured, and locked area of the board and care home or assisted living facility, this exemption applies only to the separate, secured, and locked area in which solely memory care residents reside.

[85 FR 38324, June 26, 2020]

### § 232.11 Establishment and maintenance of long-term debt service reserve account.

(a) To be eligible for insurance under this part, and except with respect to Supplemental Loans to Finance Purchase and Installation of Fire Safety

Equipment (subpart C of this part), if HUD determines the mortgage presents an atypical long-term risk, HUD may require that the borrower establish, at final closing and maintain throughout the term of the mortgage, a long-term debt service reserve account.

(b) The long-term debt service reserve account, if required, may be financed as part of the initial mortgage amount, provided that the maximum mortgage amount as otherwise calculated is not thereby exceeded.

(c) The amount required to be initially placed in the long-term debt service reserve account and the minimum long-term balance to be maintained in that account will be determined during underwriting and separately identified in the firm commitment. Although HUD may, when appropriate to avert a mortgage insurance claim, permit the balance to fall below the required minimum long-term balance, the borrower may not take any distribution of mortgaged property except when both the long-term debt service reserve account is funded at the minimal long-term level and such distribution is otherwise permissible.

[77 FR 55136, Sept. 7, 2012]

### **Subpart B—Contract Rights and Obligations**

#### **§ 232.251 Cross-reference.**

(a) All of the provisions, except § 207.258b, of part 207, subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages insured under section 232 of the Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to section 232 of the Act.

[36 FR 24618, Dec. 22, 1971, as amended at 50 FR 38787, Sept. 25, 1985]

#### **§ 232.252 Definitions.**

All of the definitions contained in § 232.1 shall apply to this subpart. In addition, as used in this part, the following term shall have the meaning indicated:

(a) *Contract of insurance* means the agreement evidenced by the Commis-

sioner's insurance endorsement and includes the provisions of this subpart and of the Act.

#### **§ 232.254 Withdrawal of project funds, including for repayments of advances from the borrower, operator, or management agent.**

Borrower may make and take distributions of mortgaged property, as set forth in the mortgage loan transactional documents, to the extent and as permitted by the law of the applicable jurisdiction, provided that, upon each calculation of borrower surplus cash (as defined by HUD), which calculation shall be made no less frequently than semi-annually, borrower must demonstrate positive surplus cash, or to the extent surplus cash is negative, repay any distributions taken during such calculation period within 30 calendar days unless a longer time period is approved by HUD. Borrower shall be deemed to have taken distributions to the extent that surplus cash is negative unless, in conjunction with the calculation of surplus cash, borrower provides to HUD documentation evidencing, to HUD's reasonable satisfaction, a lesser amount of total distributions. To the extent that the provisions of this section are inconsistent with the provisions in a borrower's existing transactional loan documents, including without limitation any HUD-required regulatory agreement, the provisions of the transactional loan documents shall apply.

[77 FR 55136, Sept. 7, 2012]

#### **§ 232.256 Partial payment of claims.**

(a) When a lender for a loan on a healthcare project becomes eligible to file an insurance claim and to assign the mortgage to the Commissioner pursuant to § 207.258, the Commissioner may request the lender, in lieu of assignment, to accept a partial payment of the claim under the mortgage insurance contract and recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the lender to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costly to the

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Federal Government than other reasonable alternatives for maintaining the project and that would keep the healthcare facility operational to serve community needs. In addition to any findings that may be provided in other guidance, the Commissioner shall base the determination on the findings listed below:

(1) The lender is entitled, after a default as defined in §207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is or can (at reasonable cost) be made physically sound;

(4) The current or proposed operator of the facility is satisfactory to the Commissioner, as demonstrated by past experience in operating similar types of healthcare facilities and by state regulatory performance;

(5) The default under the insured mortgage was beyond the control of the borrower and/or operator, or in the case of a transfer of physical assets (TPA), the proposed borrower or operator, unless the Commissioner determines that any borrower/operator deficiencies giving rise to the default have clearly been addressed; and

(6) The project is serving as, or potentially could serve as, a needed nursing home, intermediate care facility, board and care home, or assisted living facility.

(c) Partial payment of a claim under this section shall be made only when:

(1) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(2) The lender has voluntarily agreed to accept a PPC under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(3) The borrower has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commis-

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sioner. The terms of the second mortgage will be determined on a case-by-case basis to ensure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash.

(e) A lender receiving a partial payment of claim, following the Commissioner's endorsement of the mortgage for full insurance under 24 CFR part 252, will pay HUD a fee in an amount set forth through FEDERAL REGISTER notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

[77 FR 72922, Dec. 7, 2012]

### Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

SOURCE: 39 FR 28966, Aug. 12, 1974, unless otherwise noted.

#### § 232.500 Definitions.

In addition to the definitions contained in subpart A, incorporated herein by reference, the following terms, as used in §§232.500 *et seq.*, shall have the meaning indicated:

(a) *Insured loan* means a loan insured by the endorsement of the credit instrument by the Commissioner.

(b) *Insurance premium* means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(c)(1) *Fire safety equipment* means equipment that is purchased, installed, and maintained in a nursing home, intermediate care facility, assisted living facility, or board and care home and that meets the following standards for the applicable occupancy:

(i) The edition of The Life Safety Code of the National Fire Protection Association as accepted by the Department of Health and Human Services in 42 CFR 483.70; or

(ii) A standard mandated by a State under the provisions of section 1616(e) of the Social Security Act.

(iii) Any appropriate requirement approved by the Secretary of Health and Human Services for providers of services under title XVIII or title XIX of the Social Security Act.

(2) In addition to those requirements approved by the Secretary of Health and Human Services as necessary for the appropriate level of occupancy, *fire safety equipment* may also include fire safety-related improvements that are not mandatory under the requirements of the Secretary of Health and Human Services, but which the Secretary of Health and Human Services considers acceptable and reasonable for protection against the hazards of fire and which the borrower agrees to install.

(3) For the purposes of this definition, the terms *nursing home* and *intermediate care facility* shall include those facilities designated as skilled nursing facilities or intermediate care facilities by the Department of Health and Human Services.

(d) *Fire safety loan* means any form of secured or unsecured obligation determined by the Commissioner to be eligible for insurance under this subpart and, in the case of an assisted living facility or a board and care home, made with respect to such a home located in a State which the Secretary has determined is in compliance with the provisions of section 1616(e) of the Social Security Act.

(e) *Equipment cost* means the reasonable cost of fire safety equipment fully installed as determined by the Commissioner.

(f) *Insured loan maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan instrument or instruments.

(g) *Approved lender* means a financial institution or other mortgagee approved by the Commissioner as eligible for insurance under section 2 of the National Housing Act, or a mortgagee approved under section 203(b)(1) of the National Housing Act.

[39 FR 28966, Aug. 12, 1974, as amended at 50 FR 37522, Sept. 16, 1985; 59 FR 61228, Nov. 29, 1994; 80 FR 48027, Aug. 11, 2015]

## FEES AND CHARGES

**§ 232.505 Application and application fee.**

(a) *Filing of application.* An application for insurance of a fire safety loan for a nursing home, intermediate care facility, assisted living facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project to the HUD office.

(b) *Application fee.* See 24 CFR 200.40(d)(2).

[80 FR 48027, Aug. 11, 2015]

**§ 232.510 Commitment and commitment fee.**

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the fire safety loan will be insured.

(b) *Type of commitment.* The commitment will provide for the insurance of the loan after satisfactory completion of installation of the fire safety equipment, as determined by the Commissioner.

(c) *Term of commitment.* A commitment shall have a term as the Commissioner deems necessary for satisfactory completion of installation.

(d) *Commitment fee.* See 24 CFR 200.40(d)(2).

(e) *Increase in commitment prior to endorsement.* An application, filed prior to endorsement, for an increase in the amount of an outstanding firm commitment shall be accompanied by an additional application fee. The additional application fee shall be in an amount determined by the Secretary as equal to the amount determined under 24 CFR 200.40(d)(2), which shall not exceed \$5.00 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. The additional inspection fee shall be paid prior to the date installation of fire safety equipment is begun, or, if installation has

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begun, it shall be paid with the application for increase.

[39 FR 28966, Aug. 12, 1974, as amended at 80 FR 48027, Aug. 11, 2015]

### **§ 232.515 Refund of fees.**

If the amount of the commitment issued or an increase in the loan amount prior to endorsement is less than the amount applied for, the Commissioner shall refund the excess amount of the application fee submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application fee or any portion thereof may be returned to the applicant.

[80 FR 48027, Aug. 11, 2015]

### **§ 232.520 Maximum fees and charges by lender.**

See 24 CFR 200.40 titled “HUD fees” and 200.41 titled “Maximum mortgage fees and charges” for maximum fees and charges applicable to mortgages insured under 24 CFR part 232.

[80 FR 48027, Aug. 11, 2015]

### **§ 232.522 Inspection fee.**

See 24 CFR 200.40 titled “HUD fees” and 200.41 titled “Maximum mortgage fees and charges” for maximum fees and charges applicable to mortgages insured under 24 CFR part 232.

[80 FR 48027, Aug. 11, 2015]

## **ELIGIBLE SECURITY INSTRUMENTS**

### **§ 232.525 Note and security form.**

The lender shall present for insurance a note and security instrument, if required, on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

### **§ 232.530 Disbursement of proceeds.**

At the time of endorsement for insurance of the note by the Commissioner, the entire principal amount of the note shall have been disbursed to the borrower or to his creditors for his account and with his consent.

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### **§ 232.535 Loan multiples—minimum principal.**

The loan shall involve a principal obligation in multiples of \$100, and the minimum principal obligation shall be \$10,000.

[40 FR 4908, Feb. 3, 1975]

### **§ 232.540 Method of loan payment and amortization period.**

See 24 CFR 200.82 titled “Maturity” for loan payment and amortization period requirements applicable to mortgages insured under 24 CFR part 232.

[80 FR 48027, Aug. 11, 2015]

### **§ 232.545 Covenant against liens.**

(a) The security instrument shall contain a covenant against the creation by the borrower of additional liens against the property superior or inferior to the lien of such instrument, except with the prior approval of the Commissioner.

(b) The covenant required under paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of a Federal, State or local governmental agency or instrumentality under such circumstances as may be approved by the Commissioner, provided the source of funds for repayment of the inferior lien is limited to surplus cash or residual receipts.

[36 FR 24641, Dec. 22, 1971, as amended at 48 FR 35393, Aug. 4, 1983; 49 FR 12215, Mar. 29, 1984]

### **§ 232.550 Accumulation of next premium.**

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner.

### **§ 232.555 Security instrument and lien.**

The security instrument shall cover the entire property included in the project, shall be a lien on the real property of the project under the laws of the jurisdiction in which the project is located, and may be junior to such

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prior liens or mortgages indebtedness as the Commissioner may approve. The Commissioner may from time to time require such other security, in lieu of, or in addition to, a lien on real property as he may prescribe.

**§ 232.560 Interest rate.**

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower.

(b) Interest shall be payable in monthly installments on the principal amount of the loan outstanding on the due date of each installment.

[39 FR 28966, Aug. 12, 1974, as amended at 53 FR 3366, Feb. 5, 1988; 53 FR 8885, Mar. 18, 1988]

**§ 232.565 Maximum loan amount.**

The principal amount of the loan shall not exceed the lower of the Commissioner's estimate of the cost of the fire safety equipment, including the cost of installation and eligible fees, or the amount supported by ninety percent (90%) of the residual income, which is ninety percent (90%) of the amount of net income remaining after payment of all existing debt service requirements, as determined by the Commissioner. The cost of installation may include the cost of such other work to be performed on the project necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner to enhance the fire safety of the project, and such costs incidental to installation as may be approved by the Commissioner.

[40 FR 4908, Feb. 3, 1975, as amended at 80 FR 48028, Aug. 11, 2015]

**§ 232.570 Endorsement of credit instrument.**

The Commissioner shall indicate his insurance of the loan by endorsing the credit instrument and identifying the section of the Act and regulations under which the loan is insured and the date of insurance, subject to the presentation and approval by him of the following:

(a) Certification of full disbursement of loan proceeds as provided for in § 232.530.

(b) Certification of costs as required by § 232.610.

(c) Certification that fire safety equipment was installed as required by § 232.500(c).

[39 FR 28966, Aug. 12, 1974, as amended at 80 FR 48028, Aug. 11, 2015]

**§ 232.580 Application of payments.**

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan;

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

**§ 232.585 Prepayment privilege and prepayment charge.**

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days' advance written notice and it may contain a provision, with the approval of the Commissioner, for a reasonable charge in the event of prepayment.

**§ 232.586 Minimum principal loan amount.**

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8885, Mar. 18, 1988]

**PROPERTY REQUIREMENTS**

**§ 232.590 Eligibility of property.**

(a) A loan to be eligible for insurance shall be on real estate held:

(1) In fee simple; or



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(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than “twenty-five” years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

[39 FR 28966, Aug. 12, 1974; 39 FR 30349, Aug. 22, 1974]

### § 232.591 Smoke detectors.

After October 30, 1992, each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

[57 FR 33850, July 30, 1992]

## TITLE

### § 232.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

### § 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to furnish a policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering

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the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company, and in a form, satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, the policy of title insurance will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

[39 FR 28966, Aug. 12, 1974, as amended at 58 FR 34216, June 24, 1993]

## FORM OF CONTRACT

### § 232.605 Contract requirements.

The contract between the mortgagor and the general contractor may be in the form of a lump sum contract, a cost plus contract, or different or alternative forms of contract specified by the Commissioner.

[80 FR 48028, Aug. 11, 2015]

## COST CERTIFICATION REQUIREMENTS

### § 232.610 Certification of cost requirements.

(a) *Certificate and adjustment.* No loan shall be insured unless a certification of actual cost is made by the contractor.

(b) *Cost computation.* The term *actual cost of the improvements* shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner.

(c) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(d) *Incontestability.* Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(e) *Records.* The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

[39 FR 28966, Aug. 12, 1974, as amended at 80 FR 48028, Aug. 11, 2015]

#### ELIGIBLE BORROWERS

##### § 232.615 Eligible borrowers.

(a) In order to be eligible as a borrower under this subpart the applicant shall be a profit or non-profit entity, which owns a nursing home or intermediate care facility for which the Secretary of Health and Human Services has determined that the installation of fire safety equipment in such facility is necessary to meet the applicable requirements of the Secretary of Health and Human Services for providers of services under Title XVIII and Title XIX of the Social Security Act and that upon completion of the installation of such equipment the nursing home or intermediate care facility will meet the applicable fire safety requirements of HHS. Until the termination of all obligations of the Commissioner under an insurance contract under this subpart and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the loan, the borrower shall be regulated or restricted by the Commissioner as to methods of operation including requirements for maintenance of fire safety equipment.

(b) Also eligible as a borrower shall be a profit or nonprofit entity which owns an assisted living facility or board and care home for which HUD has determined that the installation of fire safety equipment is approvable under the definition contained in § 232.500(c).

[39 FR 28966, Aug. 12, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 50 FR 37523, Sept. 16, 1985; 59 FR 61228, Nov. 29, 1994; 80 FR 48028, Aug. 11, 2015]

##### § 232.616 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39695, Sept. 27, 1989]

#### SPECIAL REQUIREMENTS

##### § 232.620 Determination of compliance with fire safety equipment requirements.

Prior to Endorsement, applicant must provide certification that the installed improvements will meet HHS, as well as all other Federal, state and local requirements for fire safety equipment, if applicable.

[80 FR 48028, Aug. 11, 2015]

##### § 232.625 Discrimination prohibited.

Any contract or subcontract executed for the installation of equipment, or construction of improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of sex, religion, race, color, creed or national origin.

##### § 232.630 Assurance of completion.

If the property upon which the fire safety equipment is to be installed is subject to a mortgage insured or held by the Commissioner pursuant to subpart B of this part, the Commissioner

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may require such assurance of completion of the contract for installation as he may from time to time prescribe.

### Subpart D—Contract Rights and Obligations

SOURCE: 39 FR 28970, Aug. 12, 1974, unless otherwise noted.

#### § 232.800 Definitions.

All of the definitions contained in § 232.500 shall apply to this subpart. In addition, as used in this subpart, the following term shall have the meaning indicated:

(a) *Contract of insurance* means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan and includes the provisions of this subpart and the applicable provisions of the Act.

(b) *Maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

#### PREMIUMS

#### § 232.805 Insurance premiums.

(a) *First premium*. The lender, upon the endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one percent of the original face amount of the note.

(b) *Second premium*. The lender, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the loan for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the sum of one percent per annum of the average outstanding principal obligation of the loan for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) *Annual insurance premium*. Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the

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first principal payment shall pay an annual loan insurance premium equal to one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) *Method of premium payment*. Premiums shall be payable in cash or in debentures of the General Insurance Fund at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as provided in § 232.800 *et seq.*

(e) *Calculation of premiums*. The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

#### § 232.805a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978]

#### § 232.815 Termination of insurance.

(a) *Prepayment in full*. The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment, or 30 days prior to the Commissioner's receipt of the prepayment notice, whichever is later.

(b) *Voluntary termination*. The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all

sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

**§ 232.825 Pro rata refund of insurance premium.**

Upon termination of a loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the effective date of the termination.

RIGHTS AND DUTIES OF LENDER UNDER  
THE CONTRACT OF INSURANCE

**§ 232.830 Definition of default.**

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument, the note shall be considered in default for the purposes of this subpart.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender, because of such default, has exercised its rights under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

**§ 232.840 Date of default.**

In computing loan insurance benefits, the date of default shall be considered as:

(a) The date of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

**§ 232.850 Notice of default.**

(a) If the default is not cured within the 30 day grace period, as defined in § 232.830(c), the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact that the lender may not have elected to accelerate the debt.

**§ 232.860 Commissioner's right to require acceleration.**

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner may require the lender to accelerate payment of the outstanding principal balance due.

**§ 232.865 Election by lender.**

Where a real estate mortgage, or other security instrument has been used to secure the payment of a loan made under the provisions of this subpart and subpart C of this part, the lender may either elect to assign the loan to the Commissioner in exchange for the payment of insurance benefits or may exercise its rights under the note and security instrument in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Commissioner shall be so notified and the contract of insurance shall be deemed terminated upon the date of receipt of such notification.

**§ 232.875 Maximum claim period.**

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

**§ 232.880 Items to be delivered on submitting claim.**

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commission in

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writing, the lender shall deliver to the Commissioner:

(a) The fiscal data pertaining to the loan transactions;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and material-men's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default and all claims of the lender against the borrower or others arising out of the loan transaction;

(e) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner;

(f) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(g) Any additional information or data which the Commissioner may require;

(h) The following cash items, held in connection with the loan insured under this subpart, shall either be retained by the lender or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed.

(1) Any cash held by the lender or its agents or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal of the loan indebtedness.

(2) All funds held by the lender for the account of the borrower received pursuant to any other agreement.

**§ 232.885 Insurance benefits.**

(a) *Method of payment.* Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(b) *Amount of payment.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in an amount equal to the unpaid principal balance of the loan as of the date of default determined as follows:

(1) By adding the following items:

(i) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(ii) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(iii) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(iv) Any loan insurance premiums paid after default.

(v) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned thereon, as of the date such cash payment is made, except when the lender fails to meet any one of the applicable requirements of §§ 232.850, 232.875, and 232.880, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only

to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section the following items:

(i) Any amount received by the lender on account of the loan after the date of default.

(ii) Any net income received by the lender from the property covered by the note or security instrument and not applied to prior debts held by that lender.

(iii) The sum of the cash items retained by the lender pursuant to § 232.880(h)(i)(ii).

[39 FR 28970, Aug. 12, 1974, as amended at 80 FR 51468, Aug. 25, 2015]

#### **§ 232.890 Characteristics of debentures.**

Debentures issued in settlement of insurance claims under this subpart shall have the same characteristics and the same requirements for registration and redemption as those issued pursuant to subpart B of this part except that debentures shall bear interest at the rate in effect as of the date the commitment was issued, or as of the date the loan was first endorsed for insurance, whichever rate is higher and shall mature 10 years from the date of issue which date shall be the date of execution of the assignment of the loan to the Commissioner.

#### **§ 232.893 Cash adjustment.**

Any difference of less than \$50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

[59 FR 49816, Sept. 30, 1994]

#### **ASSIGNMENTS**

#### **§ 232.895 Assignment of insured loans.**

(a) An insured loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its ob-

ligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm, or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan to other than an approved lender.

#### **EXTENSION OF TIME**

#### **§ 232.897 Actions to be taken by lender.**

With respect to any action required of the lender within a period of time prescribed by this subpart, the Commissioner may extend such period.

### **Subpart E—Insurance of Mortgages Covering Existing Projects**

SOURCE: 53 FR 33735, Aug. 31, 1988, unless otherwise noted.

#### **§ 232.901 Mortgages covering existing projects are eligible for insurance.**

A mortgage executed in connection with the purchase or refinancing of an existing project without substantial rehabilitation may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

[59 FR 61228, Nov. 29, 1994]

#### **§ 232.902 Eligible project.**

Existing projects (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The project must not require substantial rehabilitation and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the project must have attained sustaining

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occupancy (occupancy that produces income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the project for insurance; alternatively, the borrower must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

[59 FR 61228, Nov. 29, 1994]

### § 232.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in 24 CFR 200.15, a mortgage within the limits set forth in this section shall be eligible for insurance under this subpart.

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) for a profit motivated borrower (ninety percent (90%) for a private nonprofit borrower) of the Commissioner's estimate of the value of the project, including major movable equipment to be used in its operation and any repairs and improvements. The Commissioner's estimate of value shall result from consideration of:

- (1) Estimated market value of the Project by capitalization,
- (2) Estimated market value of the Project by direct sales comparison, and
- (3) Total estimated replacement cost of the Project.

In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The insured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) for a profit motivated borrower (ninety percent (90%) for a private nonprofit borrower) of the net projected project income available for payment of debt service. Net projected Project income available for debt service shall be determined by reducing the Commissioner's estimated gross in-

come for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* (1) In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the insured mortgage, the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness. For the purposes of this requirement:

(i) The Project shall not have changed ownership subsequent to the date of application, or

(ii) The Project shall have been sold to a purchaser who has an identity of interest with the seller (as defined by the Commissioner).

(2) The cost to refinance the existing indebtedness will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The amount required to pay off the existing indebtedness;

(ii) The amount of the initial deposit for the reserve fund for replacements;

(iii) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 200.41;

(iv) The estimated repair costs, if any;

(v) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees; and

(vi) The amount of any long-term debt service reserve account required by the Commissioner pursuant to § 232.11.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the project is to be acquired by the borrower and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed 85 percent for a profit-motivated borrower and 90 percent for a private nonprofit borrower of the cost of acquisition as determined by the Commissioner. The cost of acquisition shall consist of the following

items, to the extent that each item (except for paragraph (d)(1) of this section) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price is indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 200.41;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees; and

(6) The amount of any long-term debt service reserve account required by the Commissioner pursuant to § 232.11.

[53 FR 33735, Aug. 31, 1988, as amended at 59 FR 61228, Nov. 29, 1994; 77 FR 55136, Sept. 7, 2012]

#### **§ 232.904 Term of the mortgage.**

Notwithstanding the provisions of § 232.27, a mortgage insured under this subpart must have a maturity satisfactory to the Commissioner which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for insurance.

#### **§ 232.905 Labor standards and prevailing wage requirements.**

The provisions of §§ 232.70–232.74 of this part shall not apply to mortgages insured under commitments issued in accordance with this subpart.

#### **§ 232.906 Processing of applications and required fees.**

(a) *Processing of applications.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to submission of an initial application for either a conditional or firm commitment. After the preapplication conference an application for a conditional

or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD Office on a HUD approved form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. No application shall be considered unless accompanied by all exhibits required by the form and program handbooks. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of any improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of \$3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of \$5 per thousand dollars of the requested mortgage amount to be insured less any amount previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(e) *Cross-reference.* The provisions of paragraphs (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (h) (Transfer fee), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to applications submitted under subpart E of this part.

[61 FR 14416, Apr. 1, 1996]



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### **Subpart F—Eligible Operators and Facilities and Restrictions on Fund Distributions**

SOURCE: 77 FR 55137, Sept. 7, 2012, unless otherwise noted.

#### **§ 232.1001 Scope.**

This subpart establishes requirements applicable to the operators of healthcare facilities and the facilities under this part.

#### **§ 232.1003 Eligible operator.**

Operator shall be a single asset entity acceptable to the Commissioner, and shall possess the powers necessary and incidental to operating the healthcare facility, except that the Commissioner may approve a non-single asset entity under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner. A master tenant under a master lease approved by the Commissioner who has subleased the healthcare facility to an operator is not an Operator.

#### **§ 232.1005 Treatment of project operating accounts.**

All accounts deriving from the operation of the property, including operator accounts and including all funds received from any source or derived from the operation of the facility, are project assets subject to control under the insured mortgage loan's transactional documents, including, without limitation, the operator's regulatory agreement. Except as otherwise permitted or approved by HUD, funds generated by the operation of the healthcare facility shall be deposited into a federally insured bank account, provided that an account held in an institution acceptable to Ginnie Mae may have a balance that exceeds the amount to which such insurance is limited. Any of the owner's project-related funds shall be deposited into a federally insured bank account in the name of the borrower provided that an account held in an institution acceptable to Ginnie Mae may have a balance that exceeds the amount to which such insurance is limited.

#### **§ 232.1007 Operating expenses.**

Goods and services purchased or acquired in connection with the project shall be reasonable and necessary for the operation or maintenance of the project, and the costs of such goods and services incurred by the borrower or operator shall not exceed amounts normally paid for such goods or services in the area where the services are rendered or the goods are furnished, except as otherwise permitted or approved by HUD.

#### **§ 232.1009 Financial reports.**

(a) The borrower must provide HUD and lender an audited annual financial report based on an examination of its books and records, in such form and substance required by HUD in accordance with 24 CFR 5.801 and 24 CFR 200.36.

(b) Operators must submit financial statements quarterly within 60 calendar days of the date of the end of each fiscal quarter, setting forth both quarterly and fiscal year-to-date information, except that the final fiscal year end quarter must be submitted to HUD within 90 calendar days of the end of the quarter, in accordance with 24 CFR 5.801(c)(4), or within such additional time as may be provided by the Commissioner for good cause shown. HUD may direct that such forms be submitted to the lender or another third party in addition to or in lieu of submission to HUD.

[79 FR 55362, Sept. 16, 2014]

#### **§ 232.1011 Management agents.**

(a) An operator or borrower may, with the prior written approval of HUD, execute a management agent agreement setting forth the duties and procedures for matters related to the management of the project. The management agent, each initial management agent agreement with that agent, and any amendments to such management agent agreements deemed material by the Commissioner must be acceptable to HUD and approved in writing by HUD.

(b) An operator or borrower may not enter into any agreement that provides for a management agent to have rights

to or claims on funds owed to the operator.

**§232.1013 Restrictions on deposit, withdrawal, and distribution of funds, and repayment of advances.**

(a) *Deposit of funds.* An operator must deposit all revenue the operator receives directly or indirectly in connection with the operation of the healthcare facility in an account with a financial institution whose deposits are insured by an agency of the Federal Government, *provided* that an account held in an institution acceptable to Ginnie Mae may have a balance that exceeds the amount to which such insurance is limited.

(b) *Withdrawal of funds.* If a quarterly/year-to-date financial statement demonstrates negative working capital as defined by HUD, or if the operator fails to timely submit such statement, then until a current quarterly/year-to-date financial statement demonstrates positive working capital or until otherwise authorized by HUD, the operator may not distribute, advance, or otherwise use funds attributable to that facility for any purpose other than operating that facility.

**§232.1015 Prompt notification to HUD and mortgagee of circumstances placing the value of the security at risk.**

(a) HUD and the mortgagee shall be informed of any notification of any failure to comply with governmental requirements including the following:

(1) The licensed operator of a project shall promptly provide HUD and the mortgagee with a copy of any notification that has placed the licensure, a provider funding source, and/or the ability to admit new residents at risk, and any responses to those notices, provided that HUD may determine certain information to be exempt from this requirement based upon severity level. With respect to the requirements of this section:

(i) The operator shall deliver to HUD and the mortgagee electronically, within 2 business days after the date of receipt, unless a longer time period is approved by HUD, copies of any and all notices, reports, surveys, and other

correspondence (regardless of form) received by the operator from any governmental authority that includes any statement, finding, or assertion that:

(A) The operator or the project is or may be in violation of (or default under) any of the permits and approvals or any governmental requirements applicable to the operation of the facility;

(B) Any of the permits and approvals is to be terminated, limited in any way, or not renewed;

(C) Any civil money penalty (other than a de minimis amount) is being imposed with respect to the facility; or

(D) The operator or the project is subject to any governmental investigation or inquiry involving fraud.

(ii) The operator shall also deliver to HUD and the mortgagee, simultaneously with delivery to any governmental authority, any and all responses given by or on behalf of the operator to any of the foregoing and shall provide to HUD and the mortgagee, promptly upon request, such additional information relating to any of the foregoing as HUD or the mortgagee may request. The receipt by HUD and/or the mortgagee of notices, reports, surveys, correspondence, and other information shall not in any way impose any obligation or liability on HUD, the mortgagee, or their respective agents, representatives, or designees to take (or refrain from taking) any action; and HUD, the mortgagee, and their respective agents, representatives, and designees shall have no liability for any failure to act thereon or as a result thereof.

(2) The operator shall provide additional and ongoing information as requested by the borrower, mortgagee, or HUD pertaining to matters related to that risk. Controlling documents between or among any of the parties may provide further requirements with respect to such notification and communication.

(b) This section is applicable to all operators as of October 9, 2012.